

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRIAN JOHNSON,

Plaintiff,

v.

No. CIV-16-0011 LAM/GJF

**SIERRA COUNTY BOARD OF
COUNTY COMMISSIONERS, CURTIS CHERRY,
GLENN HAMILTON, and JOE BACA,**

Defendants.

**ORDER GRANTING IN PART MOTION
TO EXTEND TIME TO AMEND COMPLAINT [Doc. 63]**

THIS MATTER is before the Court on *Plaintiff's Motion to Extend Time to Add Additional Defendants or Amend Complaint* (Doc. 63), filed on November 30, 2016. Defendants Sierra County Board of County Commissioners and Curtis Cherry filed a response to the motion on December 13, 2016. [Doc. 71]. No other defendant filed a response to the motion, and Plaintiff has not filed a reply, and the times for doing so have passed. Having considered the motion, response, record of the case, and relevant law, the Court finds that the motion is well-taken and should be **GRANTED**.

The deadline for Plaintiff to amend pleadings and/or join additional parties was December 19, 2016. *See* [Doc. 51 at 1]. In his motion, Plaintiff states that he diligently sought to take Defendant Baca's deposition, but that the earliest mutually available date was January 18, 2017. [Doc. 63 at 2]. Plaintiff, therefore, asks the Court to allow him an additional forty (40) days from December 19, 2016 (or until January 30, 2017) to add additional parties or

amend the complaint. *Id.* at 3. Plaintiff states that counsel for Defendants Baca and Hamilton oppose the motion (*id.* at 2); however, as noted above, Defendants Baca and Hamilton did not file a response to the motion. Plaintiff further states that counsel for Defendants Sierra County Board of County Commissioners and Cherry take no position on the motion (*id.* at 3). The response filed by Defendants Sierra County Board of County Commissioners and Cherry state that the reason their counsel took no position on the motion was because “[t]he asserted basis for the Motion appears to be the inability to set the deposition of . . . [Defendant] Baca.” [*Doc. 71* at 1]. However, Defendants Sierra County Board of County Commissioners and Cherry state that “Fed. R. Civ. P. 15 provides Plaintiff the mechanism for amendment at this stage in the litigation of this matter.” *Id.*

Pursuant to Rule 15(a)(1) a party may amend its pleading once as a matter of course under certain circumstances, and Rule 15(a)(2) provides that “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Here, Plaintiff has already amended his complaint twice (*see Docs. 19* and *62*), so Plaintiff may only amend his complaint with either the opposing parties’ written consent or leave of Court pursuant to Rule 15(a)(2). Therefore, the Court will deny the motion to the extent Plaintiff is asking to add additional parties or amend the complaint as a matter of course, and the Court will allow Plaintiff an extension of time of forty (40) days to move to amend his complaint under Rule 15(a)(2).

IT IS THEREFORE ORDERED that *Plaintiff’s Motion to Extend Time to Add Additional Defendants or Amend Complaint* (*Doc. 63*) is **GRANTED in part**, and Plaintiff is granted an extension of time in which to file a motion to amend his complaint pursuant to Rule 15(a)(2), until **February 7, 2017**, in accordance with the Court’s order filed concurrently regarding *Document 74*.

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE